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No. 95-708

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

UNITED STATES OF AMERICA *ex rel.*
THEODORE R. ANDERSON,
Cross-Petitioner,

v.

NORTHERN TELECOM INC.,
a Delaware corporation,
Cross-Respondent.

On Petition and Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

NORTHERN TELECOM'S BRIEF IN OPPOSITION TO RELATOR ANDERSON'S CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a court of appeals affirms a district court's grant of summary judgment, does the appellate court exceed its authority under a *de novo* standard of review by reciting and relying on additional undisputed facts evident from the appeal record besides those facts specifically noted in the district court's opinion, when such facts are consistent with the district court's opinion and ruling?

2. Whether the court of appeals and the district court correctly found that the *qui tam* relator here failed to establish that defendant presented any false claims to the Government in connection with the sale of the telecommunications switch at the Letterkenny Army Depot?

LIST OF PARTIES AND RULE 29.6 LIST

The parties to this proceeding are Theodore R. Anderson, who is the relator and *qui tam* plaintiff, and Northern Telecom Inc.,[1] the defendant.

The United States of America did not intervene in the proceedings below and is not a party to this case.

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[1] Northern Telecom Inc.'s parent corporation is Northern Telecom Limited - Northern Telecom Limitee, a Canadian corporation. Northern Telecom Inc.'s subsidiaries are wholly owned.

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Cross-Respondent, Northern Telecom Inc. ("Northern"), submits this Brief in Opposition to Relator Anderson's Conditional Cross-Petition for a Writ of Certiorari.

OPINIONS BELOW

See Northern Telecom's Petition for Certiorari in *Northern Telecom Inc. v. United States of America ex rel. Theodore R. Anderson*, Case No. 95-471.

JURISDICTION

See Northern Telecom's Petition for Certiorari in *Northern Telecom Inc. v. United States of America ex rel. Theodore R. Anderson*, Case No. 95-471.

STATUTE INVOLVED

See Northern Telecom's Petition for Certiorari in *Northern Telecom Inc. v. United States of America ex rel. Theodore R. Anderson*, Case No. 95-471.

Northern disputes that Relator Anderson ever raised any issue in the District Court or the Court of Appeals concerning the Fifth Amendment to the U.S. Constitution and denies that Mr. Anderson is entitled to raise a constitutional issue at this stage of the proceedings.

STATEMENT OF THE CASE

Northern refers the Court to the Statement of the Case in its Petition for Certiorari in *Northern Telecom Inc. v. United States of America ex rel. Theodore R. Anderson*, Case No. 95-471. In accordance with Supreme Court Rule 15.2, Northern addresses certain misstatements of fact and law by Relator Anderson that bear on what issues properly would be before the Court if the Cross-Petition is granted.

A. Introduction.

Relator Theodore Anderson brought this action contending that Northern violated the False Claims Act when

it sold certain digital telecommunications switches to the United States military during the 1980s. The United States was notified of the case and declined to intervene.

Northern manufactures and sells digital telecommunications switches. Northern's digital switches are large, complicated, multi-million dollar electronic systems that handle high-speed automated switching of telephone calls for telephone company central offices and large commercial and government facilities, including military bases. The switches Northern sold to the U.S. military met Government specifications and have performed extremely well.

Like any high technology company, Northern is constantly developing new systems, new configurations, and software changes to enhance its products. During the 1980s Northern's engineers considered a proposed change in the grounding configuration of Northern's switches. After a great deal of study and debate, Northern's engineers ultimately decided that the benefits of isolated system grounding outweighed the risks and that such a grounding array could increase the robustness of Northern's switches and facilitate features for Northern's switches that were planned for the future. That change was called isolated system grounding and involved minor changes to the internal wiring of Northern's switches. Implementation of it reflected a departure from past wisdom about how to design the internal grounding of telecommunications switches.

After Northern's engineers decided to implement the isolated system grounding change, Northern provided this change to the United States military at no charge and arranged to have its technicians visit switches at military bases to implement the change.

Anderson, a non-engineer technician with a limited education, worked at several Northern telephone switch sites

to help implement various routine switch modifications and repairs. While employed by Northern, Anderson became aware of the internal debate among Northern's telecommunications engineers about the merits and potential problems with the change to isolated system grounding.

Anderson was not involved with Northern's development of the isolated system grounding array for its switches and lacked any specialized engineering expertise. Anderson was merely a spectator who observed certain portions of the internal debate among engineers. Anderson was easily swayed by statements reciting the presence of "current on the frame of switches," not realizing that some low-voltage DC currents traditionally had been present on properly installed telephone switches and caused no threat to human safety or switch performance.[2]

After Anderson left Northern's employ he sought to avenge various personal grievances arising out of his employment at Northern. Anderson seized on information he had heard about isolated system grounding and used it to accuse Northern of wrongdoing. According to Anderson, such wrongdoing occurred because Northern sold certain telecommunications switches to the U.S. Air Force in the early 1980s that were designed with an integrated grounding array rather than isolated system grounding. In Anderson's view, any switch that Northern had sold at any time that lacked isolated system grounding was *per se* defective even if

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[2] In this action, Anderson seized on such statements about current on switches, failing to distinguish between the safe low voltage DC currents that power such things as telephone switches, flashlights, children's toys, and transistor radios, and potentially harmful AC currents, which are not used to power telephone switches.

the switch was safe, performed well, and worked according to all specifications.

In the first phase of Anderson's campaign against his former employer, he sought to have the Government, through a grand jury, bring a criminal indictment against Northern and Anderson's former supervisors in the U.S. District Court for the District of Colorado. After exhaustive investigation by the FBI and the Departments of Justice and Defense, including numerous interviews of Northern representatives and grand jury testimony by several Northern employees, the U.S. Attorneys and grand jury handling the case found no basis for any charges.

Anderson also pursued self-help remedies in his campaign to harass Northern. He admits he broke into Northern's offices and stole documents including a Northern customer list. He also sought to sell his services as a consultant to Northern's customers who could supposedly assist them in bringing suit against Northern. He also sought to have his former boss's secretary destroy his personnel file to aid him in a wrongful discharge suit. *See* Ninth Circuit: Northern Ex. R., CR 93, Ex. 6(A), vol. 1, at 155-67, 180-200; vol. 2, at 234-48; *Anderson v. Northern Telecom Inc.*, No. 90-2-02940-9 (case filed in state court in King County, Washington, which Anderson voluntarily dismissed).

Having failed in all of his prior zealous efforts to accuse Northern of some sort of wrongful behavior, Anderson brought this *qui tam* action in the U.S. District Court for the Western District of Washington on February 13, 1990.

B. Several of Relator Anderson's Statements of Fact in His Cross-Petition Need Clarification or Correction.

Several statements of fact by Anderson in his conditional Cross-Petition need clarification or correction.

1. Anderson's Statement That the District Court Limited Discovery to Just Seven Military Bases Is Misleading.

Anderson states that "the district court limited discovery to just seven military bases . . . ." Cross-Petition, at 4. Anderson's complaint did not allege specific facts demonstrating that Northern submitted false claims for payment for the telecommunications switches at *any* particular military installations. Instead, Anderson sought to use the federal court's discovery tools to embark on a fishing expedition searching for evidence of false claims. Anderson initially conducted discovery concerning all SL-100 telephone switches that Northern sold to the U.S. military during the 1980s under three separate contracts (approximately 80 switches). The District Court intervened in discovery, however, when Anderson sought to abuse the discovery tools (for example, by seeking to have Northern identify and produce for Anderson every document with the word "grounding" in it in every file maintained by any of Northern's 49,000 employees in any of Northern's hundreds of offices worldwide).

The District Court eventually ordered Anderson to designate up to nine representative military bases where Anderson believed the evidence would show that Northern submitted a false claim in connection with the sale of a switch between 1984-87. Northern Ex. R. CR75 (Oct. 26, 1992 Order). With the consent of the parties, the District Court

bifurcated the case and ruled that it would consider Anderson's evidence of liability based on this representative group of bases designated by Anderson himself, and would reserve the question of damages for later determination if Anderson proved liability. Anderson responded by designating nine representative bases, which he later reduced to only seven. The remaining document discovery was concentrated on the switches at those bases. Northern made available and Anderson's counsel reviewed documents relating to all aspects of the installation, testing, and operation of the telecommunications switches at those seven military bases.

Thus, the District Court did not place any artificial limits on Anderson's discovery. Instead, it recognized that he lacked specific information about particular bases and placed reasonable limits on his discovery efforts.

2. Anderson's Description of the Alleged Problems with Northern's Switches Inaccurately Describes the Evidence in the District Court.

Anderson contends that Northern's telecommunications switches had a "defective grounding design that made it impossible for the systems to comply with numerous warranties and specifications, including warranties that the systems complied with the National Electrical Code, met a 10^{-8} 'digital bit error rate,' were 'state of the art' and were free of defects." Cross-Petition at 5; *see also id.* at 9-12, 21. The statements in the Cross-Petition inaccurately describe the evidence about Northern's switches that the parties presented in the District Court.

a. National Electrical Code. The evidence presented to the District Court demonstrated that the National Electrical Code was never intended to apply to the internal wiring of

telecommunications switches. Consequently, Anderson's reference to the National Electrical Code is misplaced and inaccurately describes the specifications for Northern's switches.

Anderson made alarmist references in the District Court to alleged violations of the National Electrical Code, while failing to explain that that Code was not even intended to and did not apply to internal wiring of "utilization equipment" such as telephone switches. Ninth Circuit: Northern Ex. R. CR112, at 16-20. Anderson neglected to inform this Court that the so-called "Position Paper" from which he quotes, Cross-Petition at 10, appears to have been a forged document; the person alleged to have written it testified that he had nothing to do with its preparation. Indeed Anderson's own retained expert conceded that the National Electrical Code provides little or no guidance on proper methods of grounding telephone switches and that the industry standards for this are Bellcore technical memoranda. (Bellcore is the research and development company that serves regional Bell telephone operating companies, which are some of Northern's largest customers.) Anderson's expert also conceded that Northern's integrated grounding design was consistent with relevant Bellcore standards for performance and safety of telephone equipment.

Thus, the evidence in the District Court did not support Anderson's contention that Northern's grounding configuration violated any Government specification relating to the National Electrical Code.

b. Bit Error Rate. Each time Northern installed a telecommunications switch, it put that switch through months of complex installation and acceptance testing to confirm that all aspects of the switch were performing according to specifications. The military does not place a telecommunications switch in service and pay for it until the

switch has gone through extensive testing to verify that the switch is performing according to specifications. For military switches, a military observer participated in the installation and acceptance testing and confirmed in writing that each test had been passed. The evidence in the District Court demonstrated that Northern's switches successfully completed all installation and acceptance tests at the time they were turned over to the Government, including the test for digital bit error rate. Northern Ex. R. CR93 (Bailey Declaration).

Anderson contended that the Government found Northern's switches were not in compliance with a digital bit error rate specification. Yet the evidence before the District Court demonstrated that his contention was based on a faulty test carried out by the Air Force early in its administration of the SCOPE-DIAL contract with Northern. The Air Force's 1815th Operational Test Evaluation Squadron responsible for this testing discovered that it had made a mistake in how it set its testing equipment and when it repeated those tests on a Northern switch, the switch passed and the Air Force acknowledged its mistake. Northern Ex. R. CR113 (Haunschild Declaration).

c. State of the Art/ Free of Defects. Lacking any evidence of a failure to meet actual specifications, Anderson's lawyers contended that Northern submitted a false claim because its switches were not "state of the art" or "free of defects." Cross-Petition at 5. Anderson contends that "express contractual warranties" were not met, *see, e.g.*, Cross-Petition, at 21, but he was and is unable to identify or quote the warranties that were allegedly breached. Anderson hired computer engineers who had never worked on the design of telephone switches. They sought to engage in an esoteric debate about what telephone switch designs were state of the art. Anderson also made circular arguments that the switches were not free of defects. Anderson presented declarations from a Tom Crawford and Bill Crawford, which,

contrary to Anderson's misleading summary of them in his Cross-Petition, at 11, did not confirm the existence of any problem with Northern's switches. These declarations said in essence that *if* Anderson's allegations were true, the Air Force would have wanted to know about it. The Court of Appeals correctly recognized that this evidence "does not establish a genuine issue as to whether Northern Telecom knowingly presented a false claim for the Letterkenny Army Depot switch." Northern Petition, Appendix A, at 12a. The District Court and the Ninth Circuit properly rejected Anderson's unsupported and misleading arguments.

Thus Anderson's arguments about Northern's alleged failure to meet contractual warranties and specifications represent mere rhetoric, unsupported by evidence in the District Court.

C. The Ninth Circuit Did Not Make Alternative Findings of Fact Inconsistent with the District Court's Findings.

Mr. Anderson only designated one representative military base having a Northern telecommunications switch paid for after October 27, 1986 (the date Congress amended the False Claims Act): Letterkenny Army Depot. The District Court found that the "packaged" SL-100 switch installed at Letterkenny already had the grounding features, the lack of which Anderson contended made Northern's switches defective. Northern's Petition for Certiorari, No. 95-471, Appendix B, at 24a-26a. Therefore it granted summary judgment dismissing Anderson's False Claims Act allegations relating to that military base. *Id.* In reaching this conclusion, the District Court noted the timing of the invoices submitted relating to this switch, and the timing of Northern's implementation of its isolated system grounding enhancement. *Id.* at 23a, 25a.

The Ninth Circuit reviewed the same evidence that was before the District Court on summary judgment, applying a *de novo* standard of review. Northern's Petition for Certiorari, No. 95-471, Appendix A, at 9a. It affirmed the District Court's grant of summary judgment, holding that there is "no evidence in the record that Northern Telecom knowingly presented a false or fraudulent claim for the switch." *Id.* at 12a. That ruling is correct and is based on undisputed evidence in the record.

The Ninth Circuit quoted more of the undisputed evidence in the summary judgment record than the District Court had quoted. Nevertheless, it reached the same conclusion, that Anderson had failed to present facts demonstrating that Northern knowingly submitted a false claim in connection with the grounding of the Letterkenny switch. The Court of Appeals correctly noted that the Government did not pay for the Letterkenny switch until Northern had resolved all issues concerning the switch. *Id.* at 11a-12a.

Northern had clearly argued in support of summary judgment in the District Court that it did not submit any false claim in connection with the Letterkenny switch. Northern Ex.R. CR96, at 39-47. Northern submitted detailed information to the District Court about when the Government received invoices for and paid for the switch components whose grounding design Anderson argued to be defective. Anderson Ex.R. at 11-17 (Petershack Declaration). In arguing in favor of summary judgment, Northern made the very arguments embodied in the Court of Appeals and District Court decisions. Challenging the sufficiency of Anderson's evidence about Letterkenny, Northern argued:

> At the time this [10/31/86] memo was written, the Army had not accepted the switch yet, even though the switch had been placed in service. The Type III

> acceptance testing was underway. . . . Northern was still completing the commissioning process and correcting installation problems that had been noted. The document simply indicates that Northern recognized problems that needed to be corrected before the Army would accept this switch. The reason Northern did acceptance testing was to identify problems like these. This document does not demonstrate the switch was not performing according to contract specifications at the time the Army accepted it.
>
> The SL-100 telephone switch at Letterkenny was a "packaged switch" that had the grounding enhancement already built into the design of the switch. . . . Therefore, this document does not support the theory of Relator's computer engineers that the design of Northern's switches was defective because they lacked the ISG "grounding enhancement."

Northern Ex. R. CR96, at 47 (Northern's summ. judg. brief).[3]

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[3] Thus, Anderson's statement that: "NTI's summary judgment brief in the trial court did not mention the timing of the Letterkenny 'claims for payment' as a basis for granting its motion," Cross-Petition at 7, is inaccurate. Similarly, Anderson's statement that the timing of the billing of the Letterkenny switch "was neither briefed nor orally argued in the Ninth Circuit," *Id.* at 17-18, is also inaccurate. Northern's August 24, 1993 Brief of Appellee filed in the Ninth Circuit specifically raised this basis for summary judgment, explaining that the alleged deficiencies in the Letterkenny switch occurred while Type III acceptance testing was still underway "before Northern turned it over to the Government and received the first payment from the Government . . . ." Brief of Appellee, at 31-32. Northern noted that Anderson had not even responded to this contention in the District Court. *Id.* at 32.

If Anderson had any evidence that a false claim had been submitted in connection with the Letterkenny switch, the time to present that evidence to the District Court was before it granted summary judgment against him. Anderson's belated argument that he "has never been afforded the opportunity in the Ninth Circuit or the district court to submit evidence or argument responsive to" the Court of Appeals' analysis, Cross-Petition at 6, is absurd. In addition, his argument that the Court of Appeals' ruling is based on a mistake of fact is incorrect. The District Court and the Ninth Circuit essentially adopted Northern's rationale for granting summary judgment. Anderson had notice of that rationale and a full opportunity to respond with evidence and argument during the summary judgment briefing process. Anderson had the burden of proof in the District Court to prove through competent evidence the existence of each alleged false claim. He failed to come forward with evidence to support his allegations.

Anderson has attached documents to his Cross-Petition that he never submitted to the District Court; these documents were not part of the appeal record in the Ninth Circuit. *See* Anderson Cross-Petition, Appendix A51-A59. Anderson's attempt to supplement the summary judgment record with a Declaration filed for the first time here in the Supreme Court is improper and merely confirms that the appeal record does not support his argument. Northern objects and requests that this new Declaration be stricken or ignored. This Court's rules do not provide for "evidence" to be presented for the first time on a petition for certiorari.

Nevertheless, even Anderson's new submission does not prove his False Claims Act allegations. The new documents that he submits, without any foundation to explain them, at best indicate that Northern prepared a test plan in 1986 for about $14,000 for an upgrade at the Letterkenny Army Depot. A test plan is a document, not a piece of equipment whose components are grounded. These new documents

from Anderson do not establish in any way that the grounding design for the Letterkenny switch was defective or that Northern submitted any false claim for payment in connection with that switch. Anderson's entire theory is based on the grounding design of Northern's switches; yet these additional documents have nothing to do with electrical grounding. Anderson tried submitting random assortments of documents to the District Court, which found that tactic unpersuasive: "Mr. Anderson attempts to refute this evidence by submitting an apparently random selection of invoice copies . . . [two of which] bear no indication of how -- if at all -- they relate to Mr. Anderson's allegations of defective grounding." Northern's Petition for Certiorari, No. 95-471, Appendix B, at 23a.

This Court, too, should reject Anderson's misstatements of fact concerning the Letterkenny Army Depot switch.

REASONS WHY THE CROSS-PETITION SHOULD BE DENIED

I.

THE COURT OF APPEALS' AFFIRMANCE OF THE DISMISSAL OF CERTAIN OF ANDERSON'S *QUI TAM* CLAIMS IS CONSISTENT WITH THE DISTRICT COURT'S FINDINGS ON SUMMARY JUDGMENT AND ESTABLISHED RULES CONCERNING APPELLATE REVIEW OF A GRANT OF SUMMARY JUDGMENT

Anderson contends that the Ninth Circuit affirmed summary judgment here on a basis as to which he "never had fair opportunity to submit responsive evidence or argument." Cross-Petition, at 14. Based on this faulty premise, he asks this Court to clarify the law about when courts of appeals may affirm awards of summary judgment, even though the law is clear that appellate courts may affirm judgments on alternative grounds.

This case does not present an appropriate instance for clarifying when appellate courts may affirm judgments on alternative grounds. The Ninth Circuit's ruling affirming the District Court's grant of summary judgment was based on the evidence in the record, was consistent with the District Court's ruling, and did not expand the relief the District Court granted.

When Northern filed its motion for summary judgment and supporting evidence, Anderson became obligated to come forward with evidence of his own to establish each of his claims. *See, e.g., Celotex v. Catrett*, 477 U.S. 317, 322-23 (1986). Northern contended, among other things, that Anderson lacked evidence to prove that Northern submitted any false claim to the Government. Northern Ex. R. CR96, at 39-47. Northern supported its motion with detailed evidence. Northern submitted documentation establishing the terms of the relevant contracts and the detailed performance specifications that defined the requirements that the Government wanted Northern's switches to meet. Northern submitted evidence demonstrating that its switches met the Government's performance specifications and successfully completed installation and acceptance testing. Northern also submitted evidence specifying the following information for the switch at each site: invoice number, invoice amount, date of receipt of the Government's check, Government check number, and amount received. Northern Petition, Appendix B, at 23a. Through this process, Northern challenged Anderson to come forward with any evidence he had supporting his allegations of false claims.

Anderson vigorously opposed Northern's summary judgment motion. He specifically argued that the District Court should focus on the date the Government paid each invoice rather than the date each invoice was submitted. Northern Ex. R. CR109, at 35. In this context, Anderson argued that invoices for the Letterkenny switch were

presented in 1987. *Id.* He presented various documents that he contended support his claims. If he had *any* evidence supporting his allegations, he knew that he better get that evidence before the court. He plainly knew that Northern contended that the Government did not accept the Letterkenny switch or pay for it until after all installation and acceptance testing had been completed.

Anderson would not have done anything differently in opposing summary judgment had he known the District Court or Court of Appeals would pay attention to the dates Northern submitted claims for payment to the Government for the Letterkenny switch and the dates the Government paid those claims. Anderson knew that the dates particular claims for payment were submitted and paid were relevant. In opposition to summary judgment, he submitted what the District Court called a "random selection of invoice copies." Northern Petition, Appendix B, at 23a. If he had other invoices to submit along with evidence tying such invoices to his electrical grounding allegations, he was on notice that the time to submit them was before the District Court granted summary judgment, rather than years later as an appendix to a petition for certiorari.

Anderson cannot reasonably claim that he lacked a fair opportunity to submit evidence and argument responsive to Northern's summary judgment motion. Similarly he cannot claim surprise at the rationale adopted by either the District Court or the Court of Appeals, given that both courts based their rulings on evidence and arguments advanced by the parties during the summary judgment process.

The law is clear that an appellate court may affirm a decision on any ground supported by the record. This Court's decisions so state. *See, e.g., Thigpen v. Roberts*, 468 U.S. 27, 29-30 (1984) ("we may affirm on any ground that the law and the record permit and that will not expand the

relief granted below"); *see also Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842 n.7 (1984); *Blum v. Bacon*, 457 U.S. 132, 137 n.5 (1982). The courts of appeals are not in disagreement about this fundamental precept of appellate procedure. *See, e.g., Cole v. Ruidoso Municipal Schools*, 43 F.3d 1373, 1382 (10th Cir. 1994); *First Pacific Bank v. Gilleran*, 40 F.3d 1023, 1024 (9th Cir. 1994), *cert. denied*, 116 S.Ct. 55 (1995); *White v. Moulder*, 30 F.3d 80, 82 (8th Cir. 1994), *cert. denied*, 115 S.Ct. 738 (1995); *Conkling v. Turner*, 18 F.3d 1285, 1296 n.9 (5th Cir. 1994); *Lawshe v. Simpson*, 16 F.3d 1475, 1478 (7th Cir. 1994).

Therefore, the Ninth Circuit's decision to affirm the dismissal of Anderson's claims relating to the Letterkenny Army Depot switch was proper under any articulation of the rule for affirming summary judgment rulings. Its decision was supported by the appeal record and did not expand the relief granted below. Granting certiorari on that issue here would not clarify any legal principle.

II.

THE FACTS PRESENTED IN THE DISTRICT COURT DO NOT RAISE ANDERSON'S HYPOTHETICAL SECOND QUESTION CONCERNING BILLING FOR ITEMS THAT DO NOT MEET CONTRACTUAL WARRANTIES

Anderson is correct that this Court has written relatively few decisions construing the False Claims Act. For the reasons stated in its Petition, Northern believes that the Ninth Circuit's ruling on retroactivity issues raises issues of national importance concerning both the False Claims Act and other potentially retroactive legislation.

Nevertheless, the Ninth Circuit's ruling here on the scope of the False Claims Act as it applies to post-1986 conduct reflects a correct interpretation of the Act. The Ninth Circuit correctly stated that liability under the False Claims Act arises from the knowing presentation of what is known to be false, as opposed to innocent mistakes or negligence. Northern Petition, Appendix A, at 10a.

Here, viewing the evidence in the light most favorable to Anderson, there is evidence of extensive discussion among engineers about what was the most effective way to ground switches, followed by implementation of a grounding change when a consensus developed among the engineers. There is no evidence that any switch failed to meet the Government's performance specifications once installation and acceptance testing were completed and the Government paid for the switch. Debate among engineers about engineering issues does not constitute submission of a false claim when all equipment sold to the Government was tested for and met the Government's own performance specifications. Both the District Court and the Court of Appeals conducted a detailed review of the facts relating to Anderson's claims and found there was insufficient evidence to sustain his allegations of a false claim relating to the Letterkenny switch.

Given this factual record, this is not an appropriate case to clarify the law about what kinds of conduct constitute a violation of the post-1986 False Claims Act, or the extent to which government awareness of a problem with a product defeats an allegation that a false claim was submitted. *Cf. Boisjoly v. Morton Thiokol, Inc.*, 706 F.Supp. 795 (D. Utah 1988). The Ninth Circuit's decision below concerning the Letterkenny switch does not implicate either of those issues or any other important legal issue under the False Claims Act.

CONCLUSION

Relator Anderson's conditional cross-petition for a writ of certiorari should be denied.

December 4, 1995

Respectfully submitted,

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